

## **Exhibit B**

Declaration of Todd Godfrey in  
Support of Ancestry's Motion  
for Summary Judgment

COHEN-JOHNSON, LLC  
H. Stan Johnson, Esq. (SBN: 0265)  
(sjohnson@cohenjohnson.com)  
375 E. Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-2500  
Facsimile: (702) 823-3400

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Shon Morgan (*Pro Hac Vice*)  
shonmorgan@quinnemanuel.com  
Jack Baumann (*Pro Hac Vice*)  
jackbaumann@quinnemanuel.com  
865 South Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, California 90017-2543  
Telephone: (213) 443-3000  
Facsimile: (213) 443-3100

Cristina Henriquez (*Pro Hac Vice*)  
(cristinahenriquez@quinnemanuel.com)  
555 Twin Dolphin Drive, 5th Floor  
Redwood Shores, California 94065  
Telephone: (650) 801-5000  
Facsimile: (650) 801-5000

*Attorneys for Defendants*

ANCESTRY.COM OPERATIONS INC.,  
ANCESTRY.COM INC., and ANCESTRY.COM LLC

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

ANTHONY SESSA and MARK SESSA, on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

ANCESTRY.COM OPERATIONS INC.,  
a Virginia Corporation;  
ANCESTRY.COM, INC., a Delaware  
Corporation; ANCESTRY.COM LLC,  
a Delaware Limited Liability Company; and  
DOES 1 through 50, inclusive,

Defendants.

Case No. 2:20-cv-02292

**DECLARATION OF TODD GODFREY IN  
SUPPORT OF ANCESTRY'S MOTION  
FOR SUMMARY JUDGMENT**

I, Todd Godfrey, declare as follows:

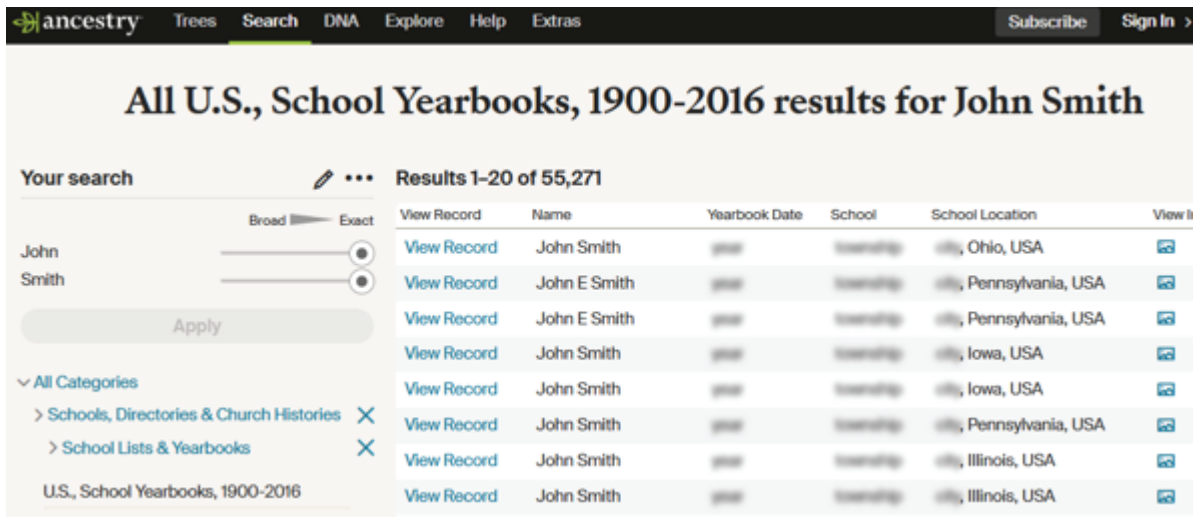
1. I am Vice President of Global Content for Ancestry.com Operations Inc., a wholly-owned subsidiary of Ancestry.com Inc. Ancestry.com Inc. is the parent of Ancestry.com Operations Inc. In this declaration, I collectively refer to these entities as “Ancestry” and distinguish among them only if necessary to ensure accuracy and clarity. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. Since 2008, I have been employed by Ancestry, a genealogy company that owns and operates the public website Ancestry.com. As part of my job responsibilities, I am familiar with Ancestry's operations and record keeping, and I have reviewed Ancestry's business records and other documents that provide the basis for my statements. Through this review and based on my personal knowledge, which I obtained through my employment, training, and expertise at Ancestry, I have personal knowledge of the facts stated in this declaration.

3. The subscription services Ancestry offers provide access to Ancestry.com, which contains various historical records, including digitized yearbook records, which can be used to trace family histories. Many of the yearbook records in Ancestry's Yearbook Database have never been viewed. Some, but not all, of the digital yearbook records in Ancestry's Yearbook Database are searchable on Ancestry.com. Not every record in each of the Nevada yearbooks on Ancestry's website is searchable. Many of the searchable yearbook records on Ancestry's site do not contain photographs. For the records that are searchable, Ancestry.com users can enter certain search terms (name, location) to search Ancestry's Yearbook Database. Ancestry responds to a search query by doing one of the following: (1) presenting a list of search results that might match the user's query, (2) not displaying any search results and instead indicating that the search is too broad, or (3) indicating there are no good matches for the user's query.

4. Ancestry does not keep search results in any static form. Instead, search results are generated only in response to a user's search, and thus, results will vary depending on the search criteria used.

5. Below is a true and correct copy of a screenshot of Ancestry's website reflecting a partial list of results from a search for "John Smith," without further qualifiers, that was run in Ancestry's Yearbook Database without an Ancestry free trial or subscriber account on January 17, 2023.



6. Below is a true and correct copy of a screenshot of Ancestry's website following a search run without an Ancestry account on January 17, 2023 for "Shon Morgan," "Nevada, USA," in Ancestry's Yearbook Database, which reflects there were no results for that search.



1           7.       The lists in the two screenshots above do not exist in static form on Ancestry's site.  
2 They are instead generated only in response to a user's search.

3           8.       The information reflected in any results list is stored in different portions of  
4 Ancestry's database and is drawn together through application programming interfaces ("APIs")  
5 into a "search result" list only if a user has conducted a search that corresponds with a record.  
6 There are also various ranking models that affect which results are displayed that change  
7 periodically, thus, the same search input could generate different results over time. As a result,  
8 any list will differ depending on the user-provided inputs and when the search was run. The same  
9 is true of any other search result list on Ancestry's site, including those in paragraphs 27, 31, 39  
10 and 43 of plaintiffs' complaint.

11           9.       Non-subscribers who hover over the "View Record" icon for a record contained in  
12 a search results list will be able to see a thumbnail image of the full yearbook page on which the  
13 listed record appears and a list of the categories of information that might be available for that  
14 record. Below is a true and correct copy of a screenshot reflecting the pop-up bubble that appeared  
15 when hovering over the first entry in a list generated in response to a search run without an  
16 Ancestry account for "John Smith," without further qualifiers, in Ancestry's Yearbook Database  
17 on ancestry.com on January 17, 2023.

NAME: John Smith

**There's more to see**  
A picture of the original document



And things like

|                 |            |
|-----------------|------------|
| ESTIMATED AGE   | BIRTH YEAR |
| YEARBOOK DATE   | SCHOOL     |
| SCHOOL LOCATION |            |

[Sign Up Now](#)

10. These pop-up bubbles do not exist in static form on Ancestry's website; they are generated only in response to the user's interaction with the site. The information that appears in such a pop-up bubble is stored in different portions of Ancestry's database and is drawn together through various APIs only in response to a user's actions on the site. Even if a record is hosted in Ancestry's website, if a user has never searched for that record and scrolled over the "View Record" link, the pop-up bubble reflecting a thumbnail image of that record does not exist.

11. Some, but not all, records in Ancestry's Yearbook Database are "hintable" such that they might be included in a "hint" message sent to users who have signed up for an Ancestry account to inform the user of a record in which he or she might be interested. Records can only become "hintable"—and thus can only be included in a "hint" message—if the record appears to be associated with a person the user has added to his or her "family tree." Without such action by an Ancestry subscriber, free trial user, or registrant, the record cannot become a part of a "hint" message.

12. Most yearbook records that are "hintable" have never been included in a "hint" message. "Hint" messages are delivered primarily to those who are already paying subscribers. "Hint" messages do not contain any photographs or images of the record nor any solicitation to purchase a subscription. "Hint" messages contain only the name the user chose to enter in his or

her family tree (which might be no more than an initial), any birth or death year the user may have added in his or her family tree (exactly as entered by the user), the name of the database where the record is housed (“U.S., School Yearbooks, 1900-2016”), and a link to “See your hint.” Below is a true and correct copy of a screenshot reflecting a hint message for a yearbook record in Ancestry’s Yearbook Database where an Ancestry account holder provided only the first initial, last name, and year of birth for this person in his or her family tree.



13. Although “hint” messages are sent based on information users include in their family tree, the information is not perfect and many times a hint message sent based on a user’s tree will include a record associated with a different person by the same name, including records for people who have no relation to that user.

14. Before December 17, 2020, none of the seven yearbook records at issue here—(1) a group photograph of the “Blue Freedom Singers” from Mark Sessa’s 1972 high school yearbook (record id: 1276948757); (2) Mark Sessa’s 1970 high school yearbook portrait (record id: 612643856); (3) Mark Sessa’s 1972 high school yearbook portrait (record id: 612293339); (4) a group band picture from Mark Sessa’s 1970 high school yearbook (record id: 1239655393); (5) Anthony Sessa’s 1975 high school yearbook portrait (record id: 614103294); (6) Anthony Sessa’s 1976 high school yearbook portrait (record id: 1397188175); and (7) Anthony Sessa’s 1977 high school yearbook portrait (record id: 611885857)—had appeared in a search results list for anyone other than plaintiffs’ counsel. No Ancestry user with a Nevada IP address or billing address has ever interacted with any of these yearbook records in any form (viewed in search results, hovered over, accessed the image or full yearbook page) in Nevada.





**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b)(2)(E), I hereby certify that on this day, I caused a true and correct copy of the foregoing to be served via the Court's electronic system on all registered and active parties.

DATED February 2, 2023.

/s/ Shon Morgan

Shon Morgan